IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY & INTESTATE JURISDICTION

MISCELLANEOUS PETITION NO.49 OF 2006

IN

PETITION NO.419 OF 2005

Mala Sonathan Bhat. ...Petitioner.

vs.

Devdas Sadashiv Pai. ...Respondent.

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Mr.Behram Shroff i/b. Mrs.M.P.Shroff, for Petitioner.

Mrs.M.K.Epen with Mr.P.K.Alias, for Respondent.

**CORAM: D.K.DESHMUKH, J.**

**DATED:** 22nd DECEMBER,2006

**P.C.**:

1. This is a petition filed for revocation of the grant of letters of administration in favour of the respondent. Admitted position is that the letters of administration has been granted by this Court by an order made in petition no.419 of 2005 in relation to the deceased Sunitha alias Sunita Pundalik Shenoy. The letters of administration have been granted in favour of Devdas Sadashiv Pai. The said Mr.Devdas was related to the deceased Sunita. He was the brother of the deceased. One Mala Sonathan Bhat has filed this petition for revocation of the grant of the letters of administration on the ground that she is the only heir of the deceased as per the provisions of Hindu Succession Act and not the respondent. According to the petitioner, deceased Sunita was married to Mr.Pundalik. Mr.Pundalik predeceased Smt.Sunita. Mr.Pundalik had sister by name Mrs.Mukta. The petitioner viz. Smt.Mala is the daughter of Mrs.Mukta, and therefore, the petitioner is claiming to be a heir of the husband of the deceased. According to the petitioner, in terms of the provisions of the Hindu

Succession Act she being a heir of the deceased, it is she who is entitled to get the letters of administration and not the respondent.

2. I have heard the learned Counsel appearing for the respondent. The relationship between the deceased and the petitioner and the relationship between the deceased and the respondent is not in dispute. Therefore, for deciding this dispute what is to be considered is the provisions of the Indian Succession Act and the Hindu Succession Act. Perusal of the provisions of Section 218 of the Indian Succession Act shows that letters of administration in relation to a person who was a Hindu and has died intestate can be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate. Sub-section (1) of Section 218 of the Indian Successions Act,1925 is relevant, which reads as under:-

> "218. To whom administration may be granted, where deceased is a Hindu, Mohammadan, Buddhist, Sikh, Jaina or

exempted person.-

(1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased’s estate."

3. The fact that the respondent Mr.Devdas had applied for grant of letters of administration under Section 218 of the Indian Succession Act means that according to him, Sunita had died intestate, and therefore, one has to refer to the provisions of the Hindu Succession Act,1956 to find out whether Mr.Devdas would be the heir of the deceased entitled to a share in the property left behind by the deceased though the petitioner was living at that time. Perusal of Section 15 of the Hindu Succession Act,1956 shows that the property of a female Hindu dying intestate shall firstly devolve upon the sons

and daughters including the children of any predeceased son or daughter and the husband and in the absence of sons, daughters and the husband it devolves upon the heirs of the husband. Admittedly, Sunita did not have any son, daughter or children of predeceased son or daughter or husband living at the time of her death. Therefore, class (b) of sub-clause (1) of Section 15 of the Hindu Succession Act will come into play and the property will devolve on the heirs of the husband. In order to find out as to who would be the heirs of the husband, one has to refer to the provisions of Section 8 of the Hindu Succession Act. Perusal of Section 8 of the Hindu Succession Act shows that the property of a male Hindu dying intestate devolves firstly upon the heirs being the relatives specified in class I of the Schedule. Perusal of the class I of the Schedule shows that various types of relatives are enumerated in that class. It is also clear from the record that the husband of Sunita did not leave behind him any relative mentioned in class I. Then, according to section 8 of the Hindu Succession Act, in the absence of any heirs in class I the property devolves upon the relatives specified in class II. Perusal of class II shows that sister’s daughter is included in

clause (4) of sub-clause IV of Class II. Thus, in terms of section 8 of the Hindu Succession Act in the absence of class I relatives being in existence the property devolves upon the sister's daughter in class II. Thus, sister's daughter of husband of Sunita will inherit the property of deceased Sunita. According to section 218 of the Indian Succession Act, if an application for letters of administration can be made only by a person who is entitled to whole or part of the deceased's estate and as the petitioner was in existence, Mr.Devdas could not have inherited any part of the estate of the deceased. The application made by Mr.Devdas i.e. respondent under Section 218 of the Indian Succession Act was not maintainable. As the application was not maintainable, obviously the letters of administration could not have been granted. These are the only relevant considerations for deciding validity of the grant of the letters of administration in favour of the respondent. The petition, therefore, succeeds and is granted in terms of prayer clause (a).

4. The respondent is directed to pay cost of this petition to the petitioner as incurred by the petitioner.

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